No._____

IN THE

Supreme Court of the United States

AMIKA T. CLARK,

Petitioner,

v.

TYRUS J. CLARK,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the First and Fourteenth Amendments permit a family court to impose an indefinite, content-based prior restraint on a parent's speech, based solely on a "best interests of the child" rationale, without evidence of harm, without applying strict scrutiny, and also separately in a form that restricts speech even after the child reaches majority?

PARTIES TO THE PROCEEDING

Petitioner is Amika T. Clark.
Respondent is Tyrus J. Clark.

RELATED PROCEEDINGS

Tyrus J. Clark v. Amika T. Clark, Case No. 2013-DR-23-4824, Greenville County Family Court, Judgment issued March 15, 2021, entered March 17, 2021.

Tyrus J. Clark v. Amika T. Clark, Court of Appeals of South Carolina, Appellate Case No. 2021-001169, Judgment entered March 5, 2025.

Tyrus J. Clark v. Amika T. Clark, Supreme Court of South Carolina, Appellate Case No. 2025-001692, certiorari denied, Order (denial) entered December 16, 2025.

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INTRODUCTION

This petition seeks a writ of certiorari to review the South Carolina Court of Appeals' published decision, 446 S.C. 909, 17 S.E.2d 917, Opinion No. 6103 (March 5, 2025), which affirmed a permanent restraining order, a contempt finding, and an award of attorney's fees against Petitioner, Amika T. Clark, for publishing a memoir during the pendency of her divorce proceedings. The family court held Petitioner in contempt for violating a non-disparagement clause that restrains "the use of profanity or making any derogatory comments about or toward the other party… in any manner whereby the child… might learn of the same," even though the record contains no evidence that the child ever saw, accessed, or was exposed to the book. Instead, the court justified its ruling solely on the ground that it was "plausible" the child "could, and likely has" learned of or seen the book—despite Petitioner's unrebutted testimony that she had not shown the book to the child, had taken steps to prevent access, and had never brought the child to any book events ("plausible" exposure finding; "Petitioner testified that she had not shown the book to the child…").

The family court treated the publication of Petitioner's memoir as a violation of multiple provisions of the parties' orders—including the non-disparagement clause, the requirement to maintain a "moral and safe environment," prohibitions on "conduct detrimental to the child," and restrictions on exposing the child to "age-inappropriate material." It then imposed both criminal and civil contempt sanctions, ordered Petitioner to "cease and desist

from disseminating this book in any manner whatsoever," and awarded Respondent attorney's fees. The Court of Appeals affirmed the contempt finding, the permanent speech restriction, and the fee award. The South Carolina Supreme Court denied review.

The decision below authorizes a family court to impose an indefinite, content-based prior restraint on a parent's speech based solely on a generalized "best interests of the child" rationale—without evidence of harm, without applying strict scrutiny, and in a form that suppresses speech even after the child reaches majority. The order prohibits "any derogatory comments" in any context "whereby the child might learn of the same," a formulation so sweeping that it encompasses private conversations, therapy sessions, support-group discussions, and even published writings. It contains no sunset provision and extends beyond the child's adulthood, long after the State's asserted interest ends.

This Court has long held that prior restraints are "the most serious and the least tolerable infringement on First Amendment rights," and that such restraints carry a "heavy presumption" against constitutional validity. Yet neither the family court nor the South Carolina Court of Appeals identified a compelling interest recognized by this Court, found concrete or imminent harm, or considered less restrictive alternatives. Both courts instead treated a permanent speech ban as an ordinary incident of custody litigation—contrary to this Court's repeated instruction that "harm… should not simply be assumed or surmised; it must be demonstrated in detail."

The question presented is therefore of exceptional national importance: Whether the First and Fourteenth Amendments permit a family court to impose an indefinite, content-based prior restraint on a parent's speech, based solely on a "best interests of the child" rationale, without evidence of harm, without applying strict scrutiny, and in a form that restricts speech even after the child reaches majority.

Lower courts are deeply divided on this question. Some jurisdictions require strict scrutiny, evidence of harm, and narrow tailoring; others uphold template-based gag orders based solely on "best interests." The decision below deepens that split and underscores the urgent need for this Court's review.

This case is an ideal vehicle. It presents a permanent, content-based prior restraint unsupported by evidence, enforced through contempt, and extended beyond the child's majority, yet applied through a rationale that implicates custody proceedings in all 50 states. Only this Court can provide the uniform constitutional rule necessary to protect First Amendment rights in family-court proceedings across the country.

To illuminate how the family court's speech restrictions arose and why the constitutional stakes are so significant, the course of the proceedings below is summarized next.

OPINIONS BELOW

The Greenville County, South Carolina Family Court "temporary" order is unreported but reprinted at App. 128. The Greenville County, South Carolina Family Court contempt order is unreported but

reprinted at App. 31. The opinion of the South Carolina Court of Appeals is reported at 446 S.C. 909 and 17 S.E.2d 917 and reprinted at App. 3. The South Carolina Supreme Court order denying the petition for certiorari is unreported but reprinted at App. 141.

JURISDICTION

The South Carolina Appellate Court issued its opinion on March 5, 2025. Petitioner timely petitioned for rehearing and review en banc, which the South Carolina Court of Appeals denied on July 24, 2025. Petitioner then timely sought a petition for a writ of certiorari before the South Carolina Supreme Court. The South Carolina Supreme court denied the petition on December 16, 2025. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1257(a).

PERTINENT STATUTES AND RULES

The Supremacy Clause of the United States Constitution provides in the relevant part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; … shall be the supreme law of the Land; and the judges in every State shall be bound thereby, and Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art VI, cl. 2

The First Amendment to the United States Constitution provides in the relevant part:

> Congress shall make no law … abridging the freedom of speech.

U.S. Const. amend. I

The Fourteenth Amendment to the United States Constitution provides in the relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;

U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

The parties were formerly married and were divorced on July 15, 2015. App. 124; *Final Order and Divorce Decree*. That order addressed custody and placement of the parties' minor child, TEC. App. 124; *Final Order and Divorce Decree*, pp. 9–19. It also placed various restraints on the parties regarding their minor child. App. 126; *Final Order and Divorce Decree*, pp. 23–25.

On July 24, 2015, the family court issued a *Supplemental Order to Final Order and Divorce Decree*. App. 87. Exhibit B to that order clarified visitation and restraint provisions inadvertently omitted from the final decree. On October 12, 2015,

the family court issued an *Amended Supplemental Order to Final Order and Divorce Decree*, which did not modify any visitation or restraint provisions. App. 83.

In 2017, both parties pursued contempt claims, resulting in a *March 21, 2017, Final Order on Contempt Actions*. App. 76.

On March 30, 2020, Respondent filed the present contempt action, alleging Petitioner violated provisions of the *Amended Supplemental Order to Final Order and Divorce Decree* and the *Final Order on Contempt Actions*. App. 32; *March 30, 2020, Order and Rule to Show Cause*. Petitioner filed her return on October 27, 2020. App. 34; *Return to Rule to Show Cause*. The contempt hearing occurred on October 27, 2020, and January 6, 2021. After the January hearing, the family court requested briefing on the First Amendment issues. App. 25; *Email from Judge Conits (Jan. 14, 2021)*.

The South Carolina Coalition Against Domestic Violence and Sexual Assault ("SCCADVASA") and the ACLU of South Carolina Foundation sought and obtained leave to file a *Brief of Amici Curiae Concerning First Amendment, Due Process and Public Policy Arguments to Be Considered in the Court's Order on Rule to Show Cause Action*. Both parties also submitted briefs addressing the First Amendment issues. *Legal Brief of Plaintiff-Respondent Regarding the Constitutionality of Prior Restraints on Parental Speech*. *Brief of Defendant, Amika Clark, in Opposition to Plaintiff's Request to Find Defendant in Contempt of Section III(C) of the Parties' Final Order*.

On March 17, 2021, the family court issued its *Order on Contempt*. App. 31. The court found Petitioner in criminal contempt for failing to notify Respondent of the child's mental-health counseling and imposed a $1,500 fine. App. 41; *Order on Contempt*, p. 9, ¶ III(c).

The order also addressed several unrelated contempt allegations, which are not directly at issue in this petition.

The family court further found that a book Petitioner had authored violated multiple provisions of the parties' orders — including the non-disparagement clause, provisions requiring a moral and safe environment, prohibitions on conduct detrimental to the child, and restrictions on exposing the child to age-inappropriate material. App. 41-67; *Order on Contempt*, pp. 13–28. The court held Petitioner in criminal and civil contempt, ordered her to "cease and desist from disseminating this book in any manner whatsoever," imposed additional restrictions on her handling of the material, and fined her $1,500. App. 66-67; *Order on Contempt*, pp. 28–29, ¶¶ VII(s)–(t). With the parties' consent, the court added a *No Adverse Contact* Order. App. 67; *Order on Contempt*, pp. 30–31, ¶ VIII(b). It also ordered Petitioner to pay Respondent's attorney $10,000 within ninety days. App. 72; *Order on Contempt*, p. 33, ¶ X(c).

Both parties filed motions for reconsideration. Petitioner filed her *Defendant's Notice of Motion and Motion to Reconsider Order on Contempt* on March 31, 2021. App. 25. Respondent filed *Plaintiff's Notice of Motion to Reconsider and Alter or Amend Judgment Pursuant to SCRCP 52, SCRCP 59(e), and*

SCRCP 60 on March 29, 2021. App. 25. The parties filed returns on August 11 and 12, 2021. App. 25; App. 25.

The motions were heard on August 12, 2021. On August 27, 2021, the family court issued its *Order on Plaintiff's Motion to Reconsider and Alter or Amend Judgment Pursuant to SCRCP 52, SCRCP 59(e), and SCRCP 60, and Order on Plaintiff's Motion to Dismiss Defendant's Motion to Reconsider and Order on Defendant's Motion to Reconsider Order on Contempt* ("Final Order on Motions for Reconsideration"). App. 101–106. The court awarded Respondent an additional $5,000 in fees for briefing the constitutional issues and $2,433.75 for his motion to reconsider. App. 26; *Final Order on Motions for Reconsideration*, p. 3, ¶¶ 5–6. It amended the non-disparagement clause to add a "reasonable expectation of privacy" exception. App. 27; id., ¶ 7. The court denied Petitioner's motion to reconsider and her request for attorney's fees. App. 29; id., p. 4, ¶ 9.

Petitioner appealed. The South Carolina Court of Appeals (Appellate Case No. 2021-001169) issued its opinion on March 5, 2025, affirming the family court. A petition for rehearing was denied on July 24, 2025. Amika T. Clark thereafter petitioned the South Carolina Supreme Court for writ of certiorari to review this matter. The Supreme Court of South Carolina denied the petition for writ of certiorari by order, filed December 16, 2025.

This Petition for a Writ of Certiorari followed.

REASONS FOR GRANTING THE PETITION

This case presents a constitutional problem that has become both widespread and urgent: state family courts are increasingly issuing sweeping restraints on parental speech without applying the First Amendment standards this Court has long required. These orders—often permanent, and often enforced through contempt—silence parents on matters at the core of public discourse, including domestic violence and the operation of the courts themselves. Yet lower courts lack a uniform constitutional framework for evaluating these restraints, resulting in inconsistent outcomes and escalating intrusions on protected expression. The decision below exemplifies this drift, upholding a lifelong, content-based prior restraint based solely on a "best interests" rationale and without evidence of harm. This Court's intervention is necessary to restore the constitutional limits on prior restraints and to provide guidance in an area where fundamental rights are increasingly at risk.

I. Certiorari is warranted due to the family courts of this nation escalating hostility towards the speech rights of the parties before them, even after the proceedings have ended

Family courts across the country routinely impose gag orders, non-disparagement clauses, and publication bans in custody and divorce proceedings, often using template provisions—like the one at issue here—that are inserted without individualized findings, without evidence of harm, and without any

consideration of the First Amendment. These orders frequently prohibit parents from speaking about their former spouses, the litigation, or their own life experiences, including matters of profound public concern such as domestic violence, sexual assault, and the operation of the courts themselves. Yet courts apply widely divergent constitutional standards when evaluating such restraints, and this Court has never provided guidance on how the First Amendment applies in this context. Courts, however, apply sharply divergent constitutional standards when evaluating such restraints, and this Court has never provided guidance on how the First Amendment applies in this context. The result is a patchwork of inconsistent and often conflicting decisions that leave parents, children, and courts without a clear constitutional rule. This Court has repeatedly granted certiorari when lower courts apply inconsistent standards to core First Amendment protections, as in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), *Madsen v. Women's Health Center*, 512 U.S. 753 (1994), and *Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175 (1968). The same need for uniformity exists here.

This conflict is deep, acknowledged, and outcome-determinative. A growing number of courts recognize that family-court speech restrictions are prior restraints subject to strict scrutiny. In *Shak v. Shak*, 484 Mass. 658, 144 N.E.3d 274 (2020), the Massachusetts Supreme Judicial Court struck down a non-disparagement order because the State failed to show "grave, imminent harm" to the child and because concerns about future exposure were "speculative." California courts have likewise held

that speech restrictions in custody cases must be supported by evidence of harm and narrowly tailored. *In re Marriage of Candiotti*, 34 Cal. App. 4th 718 (1995). Pennsylvania has taken the same approach. *In re T.T.*, 228 A.3d 529 (Pa. SupeApp. Ct. 2020). Washington and Indiana courts have also invalidated similar restrictions absent concrete findings of harm. *In re Marriage of Slayton*, 32 P.3d 696 (Wash. Ct. App. 2001); *In re Paternity of B.J.M.*, 744 N.E.2d 898 (Ind. Ct. App. 2001). These courts apply the same First Amendment principles this Court has articulated in *Brown v. Entertainment Merchants Association*, 564 U.S. 786 (2011), *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), *United States v. Playboy Entertainment Group*, 529 U.S. 803 (2000), and *United States v. Alvarez*, 567 U.S. 709 (2012): speculation is not enough, and the government must demonstrate a direct causal link between the speech to be restrained and the harm to be prevented.

Other jurisdictions, however, uphold speech restrictions based solely on a judge's view of the "best interests of the child," without applying strict scrutiny or requiring evidence of harm. See, e.g., *In re Marriage of Hartmann*, 228 P.3d 907 (Colo. App. 2009); *In re J.S.*, 431 N.J. SupeApp. 321 (App. Div. 2013). These courts treat "best interests" as automatically compelling—a position directly at odds with *Troxel v. Granville*, 530 U.S. 57 (2000), which held that "best interests" is not a constitutionally sufficient basis to override a parent's fundamental rights. The divergence is not theoretical. Anti-disparagement clauses and speech-restrictive orders appear in standard custody templates in many states—including the order at issue here—and are

often imposed without individualized findings, without evidence of harm, without applying strict scrutiny, and without any temporal limitation. Many of these orders, like the one here, operate indefinitely and extend beyond the child's majority, even though the State's interest in the child ends at adulthood. A permanent gag order cannot be justified by a rationale that no longer exists.

Scholars have documented the national scope of the problem. Commentators have identified dozens of family-court gag orders restricting parents from speaking about their cases, their ex-spouses, or their own experiences, often enforced through contempt and often upheld without meaningful First Amendment analysis. These orders chill speech on matters of public concern, including domestic violence and sexual assault—topics that courts have repeatedly recognized as central to public discourse. See *Mahin*, 668 F.3d at 126; *Jones v. Union County*, 296 F.3d 417, 426 (6th CiApp. 2002). The chilling effect is profound: parents are deterred from writing books or memoirs, participating in support groups, reporting abuse, or criticizing judicial proceedings. Because these orders are enforceable through contempt, parents face fines, loss of custody, and even jail time for engaging in protected speech.

The First Amendment cannot mean one thing in Massachusetts and another in South Carolina. Yet that is precisely the situation today. Some courts require strict scrutiny, evidence of harm, and narrow tailoring; others uphold sweeping, template-based gag orders based solely on "best interests." The South Carolina Court of Appeals' decision in this case deepens that split by holding that "best interests"

alone is a compelling interest sufficient to justify a permanent, content-based prior restraint on a parent's speech. That holding squarely presents the question this Court must resolve.

This case is a compelling vehicle. It presents the full range of constitutional problems that arise in family-court speech restrictions: a content-based prior restraint imposed without strict scrutiny, justified solely by "best interests," unsupported by evidence of harm, vague and overbroad, enforced through contempt, and extended indefinitely beyond the child's majority. Only this Court can provide the uniform constitutional rule that lower courts urgently need. The recurring nature of these orders, the inconsistency among jurisdictions, and the fundamental First Amendment rights at stake make this case exceptionally worthy of review.

II. The family courts near routinely enter initial "temporary" orders in divorce proceedings gagging the parties' speech, thus creating a vehicle for later contempt findings, and a purported justification for prior restraints of speech after the proceedings

The family court's initial gag order appears as a "temporary order" filed April 21, 2014. It provides that, in addition to being "restrained from discussing any aspect of the current litigation with the minor child or allowing third parties to do so," the parties must not make "any disparaging or derogatory comments about the other to the minor child or allowing third parties to do so." App. 131; Temporary Order, pp. 7-8. Respondent and Ptitioner were

divorced in October 2015, and the family court folded the gagging language into its final order divorce decree. App. 119; Amended Supplemental Final Order and Divorce Decree, p. 4. In the family court's order on contempt sanctions at page 13, the origin of this gagging language is identified by the Honorable Judge Conits, presiding: "[t]he Court finds that the parties are bound by this Court's Amended Supplemental Final and Divorce Decree, filed on October 12, 2015, page 4, paragraph C, **of Judge Brown's Standard Visitation, Guidelines and Restraining Orders**[1], which states as follows: 'All parties are restrained against the use of profanity or making any derogatory comments about or toward the other party or allowing anyone to do so in front of the child or in any manner whereby the child might learn of the same.'" App. 48; Order on Contempt, p. 13.

Even if a temporary restriction on parental speech could be justified during active custody proceedings, this initial gagging language, and certainly the later restraining language in the order here goes far beyond that:

> Defendant Mother is hereby found in willful civil contempt and shall be sentenced to six (6) months incarceration at the Greenville County Detention Center, Greenville, SC, to commence April 15th, 2021. The Defendant Mother may purge herself of this incarceration by

[1] These form orders are routinely entered as initial and/or temporary orders in divorce proceedings in South Carolina. A copy of the Temporary Order wherein this form order language was incorporated is provided in the Appendix.

> immediately taking her book, Soul Pieces: Memoirs of Self-discovery After Domestic Violence and Divorce off the market in all forms, to include, but not limited to, hard cover copies, soft cover copies, electronic, or otherwise. The Defendant Mother shall cease and desist from disseminating, promoting, and/or advertising this book in any manner whatsoever to anyone. The Defendant Mother may not keep this book, rough drafts, notes, or any indicia thereof, in any form whatsoever, on the premises where the minor child resides or in any vehicle where the minor child travels. The Defendant Moher shall not expose this book, or any indicia thereof, to the parties' minor child in any manner whatsoever, nor knowingly place the minor child in a position where she may learn of the same.

App. 66; Order on Contempt, pp. 33-34.

It restricts Petitioner's speech **indefinitely**, contains **no sunset provision**, and applies **even after the child reaches majority**. The South Carolina Court of Appeals affirmed this permanent restraint without (a) identifying any compelling interest that survives the child's adulthood, (b) identifying any derogatory or disparaging language as a narrowly tailored object, or (c) without explaining how a lifelong ban on Petitioner's speech could ever constitute the least restrictive means of this speech restriction to achieve any legitimate objective. It is an indefinite, content-based prior restraint that prohibits a parent from publishing, possessing, or even privately

retaining drafts of a memoir about her own life—including her experiences with domestic violence. It bars her from discussing her experiences in therapy, support groups, or any context "whereby the child might learn of the same," and it authorizes incarceration if she fails to comply. This is the kind of sweeping, punitive speech ban that this Court has repeatedly condemned.

This Court has never upheld a speech restriction that persists after the State's interest in the child has ended. Once a child becomes an adult, the "best interests of the child" standard no longer applies. See *Troxel v. Granville*, 530 U.S. 57, 68–69 (2000) (plurality) (rejecting "best interests" as a sufficient basis to override a parent's constitutional rights). A court cannot continue to suppress a parent's speech indefinitely based on concerns that no longer exist.

The overbreadth of the order is extreme. Section III(C) prohibits "any derogatory comments" about the other parent "in any manner whereby the child might learn of the same," a formulation so sweeping that it encompasses private conversations, therapy sessions, support-group discussions, statements to law enforcement, and even writings never intended for the child. The order applies regardless of when the speech occurs, where it occurs, or to whom it is directed. It is not limited to the child's minority, to the child's presence, or even to the child's awareness. It is a blanket prohibition on disfavored speech.

This Court has repeatedly held that such broad prophylactic bans on speech are incompatible with the First Amendment. See *Carroll v. President &*

Comm'rs of Princess Anne, 393 U.S. 175, 183–84 (1968) (striking down a 10-day restraining order as insufficiently tailored); *Madsen v. Women's Health Center*, 512 U.S. 753, 765 (1994) (injunctions must be "no more burdensome than necessary"). A permanent ban on publishing a memoir — including speech on matters of public concern such as domestic violence and sexual assault — is far more burdensome than anything this Court has ever upheld. See *Mahin*, 668 F.3d at 126; *Jones v. Union County*, 296 F.3d 417, 426 (6th CiApp. 2002).

The order is also unconstitutionally vague. A person of ordinary intelligence cannot determine what constitutes a "derogatory" comment, when a comment is made "in a manner whereby the child might learn of the same," or what it means to "allow" another person to speak. This Court has long held that vague speech restrictions invite arbitrary enforcement and chill protected expression. See *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). The vagueness here is especially troubling because the order is enforced through contempt, exposing Petitioner to jail time based on subjective judgments about tone, content, and hypothetical exposure.

Nor is the order narrowly tailored. No content of the memoir is identified. The family court did not explain why a permanent restraint was "actually necessary" to prevent harm, *Brown v. EMA*, 564 U.S. 786, 799 (2011), or why less restrictive means — such as limiting the order to the child's minority — would be insufficient. The South Carolina Court of Appeals likewise failed to identify any "actual problem" that could justify suppressing Petitioner's speech for the

rest of her life. Id. The result is a sweeping, perpetual gag order that suppresses protected expression long after the State's asserted interest has expired.

The constitutional defect is compounded by the fact that much of the information Petitioner is prohibited from discussing is already publicly available in court records. A speech restriction cannot be narrowly tailored when it forbids a parent from speaking about facts that the State itself has placed in the public domain.

The family court's contempt finding is premised on a determination "that the minor child could, and likely has, learned of Petitioner's book, seen Petitioner's book and possibly read Petitioner's book, the cover of which depicts Petitioner with a made-up blackened eye." App. 51; Order on Contempt, p. 17, ¶VII(g). The family court acknowledges that restraining Petitioner from writing and publishing about her experiences implicates First Amendment protections regarding the right of free speech. She correctly cites language from *Shak v. Shak*, 484 Mass. 658, 144 N.E.3d 274 (2020), a seminal case addressing the right of family courts to restrain parental speech that may be disparaging of the other parent that, "harm to the child .... should not simply be assumed or surmised; it must be demonstrated in detail." To overcome this constitutional limitation on restraining Petitioner's free speech rights, she makes the factual finding noted above.

The problem is that this factual finding is not supported by the record. The family court found ". . .With both books being promoted so publicly, and a copy given to the minor child's sister's Petitioner, it is certainly plausible to this Court that the minor child

could, and likely has, learned of Petitioner's book, seen Petitioner's book and possibly read Petitioner's book, the cover of which depicts Petitioner with a made-up blackened eye." App. 51; Order on Contempt, pp. 16-17, ¶VII(g). This is simply not true, as there was never any evidence presented at trial that the child had likely learned of Petitioner's book, had likely seen Petitioner's book, or had likely read Petitioner's book.

Petitioner's own testimony at trial was that the contents of her book were truthful and accurate descriptions of the emotional, physical, and mental abuse she suffered during her marriage to Respondent. TT, p. 54, line 19-p. 55, line 23. Even so, Petitioner testified that not only had she not exposed her daughter to her book, but that she had taken precautions to assure her child does not access the book. TT, p. 44, line 3-p. 48, line 18, p. 56, line 4-p. 58, line 9. Petitioner testified that the child has never been in attendance at, or been invited to, any of Petitioner's book promotions, book signings, or interviews about the book or her experiences surrounding domestic violence in general. TT, p. 60, line 8-p. 64, line 14.

It is also possible that the child would not learn of Petitioner's book until she is an adult. The statutory construct and case law surrounding willful violations of a family court Order have no foundation in the concept that there is a "future possibility" of an event or violation happening. Holding a parent in contempt now, for what may possibly occur in the future, would be absurd. From a public policy perspective, if a parent can be held in contempt for what the other parent (or the family court, for that

matter) fears will happen at a future date, the South Carolina (and other) family court dockets would simply explode. *Pirkle v. Pirkle*, 303 S.C. 266, 269, 399 S.E.2d 797, 799 (Ct. App. 1990) (reversing and remanding finding of contempt where the amount of unpaid child support was based upon speculation).

While Respondent tried to convince the lower courts that the child will most certainly read Petitioner's book in the future, Respondent failed to explain to the family court what significance this "future event" would even have at his current contempt hearing if their daughter reads Petitioner's book when she is 25 years old. Simply put, if parties' daughter reads Petitioner's book for the first time as an adult, this event would have no effect whatsoever on the "non-disparagement provision" of the parties' Final Order. App. 73. None of the facts of this case presented by Respondent at the contempt proceeding: that Petitioner has written this book, that Petitioner has a copy of this book at her house in the garage, that this book is dedicated to her child, that this book has been promoted by Petitioner, that this book is available online for purchase - none of these facts establishes through clear and convincing evidence at the trial that minor child "likely has learned of Petitioner's book, seen Petitioner's book and has possibly read Petitioner's book…" all of which are either "past tense" (implying the exposure has already occurred) or "present tense," implying the exposure is currently occurring. App. 65; Order on Contempt, p. 17, ¶VII(g). *See Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 918 (1982) (before a person may be held in contempt, the record must be

clear and specific as to the acts or conduct upon which such finding is based).

The order at issue is not a routine family-court directive. It is an indefinite, content-based prior restraint that prohibits a parent from publishing, possessing, or even privately retaining drafts of a memoir about her own life—including her experiences with domestic violence. It bars her from discussing her experiences in therapy, support groups, or any context "whereby the child might learn of the same," and it authorizes incarceration if she fails to comply. This is the kind of sweeping, punitive speech ban that this Court has repeatedly condemned.

No decision of this Court has ever upheld a prior restraint of this magnitude, duration, or severity. Review is necessary to restore the constitutional limits this Court has consistently enforced and to prevent family courts from imposing lifelong speech bans based on speculation and boilerplate language.

III. A bare "best interests of the child" rationale, often employed by family courts, unsupported by evidence of harm, cannot satisfy the First Amendment's compelling-interest requirement restricting the content of protected speech

The family court justified both the gag order and the contempt sanction solely on the ground that suppressing Petitioner's speech served the "best interests of the child." But this Court has never held that "best interests" is a compelling interest capable of justifying a content-based restriction on speech. To the contrary, this Court has repeatedly rejected attempts to restrict protected expression based on

generalized concerns about children or speculative fears of future harm.

In *Brown v. Entertainment Merchants Association*, the Court held that the State may not restrict speech to protect minors without **concrete evidence of harm**, explaining that "ambiguous proof will not suffice" when the government seeks to suppress protected expression. 564 U.S. 786, 799 (2011). In *Ashcroft v. Free Speech Coalition*, the Court invalidated restrictions justified by hypothetical harms to minors, holding that "the Government may not suppress lawful speech as the means to suppress unlawful speech." 535 U.S. 234, 255 (2002). And in *United States v. Playboy Entertainment Group*, the Court reaffirmed that the government may not rely on "mere speculation or conjecture" to justify a speech restriction. 529 U.S. 803, 822 (2000).

This Court has also rejected paternalistic speech restrictions aimed at protecting minors. In *Erznoznik v. City of Jacksonville*, the Court held that the government may not "reduce the adult population to reading only what is fit for children." 422 U.S. 205, 213–14 (1975). And in *Butler v. Michigan*, the Court struck down a law restricting speech to protect minors, explaining that the State cannot "burn the house to roast the pig." 352 U.S. 380, 383 (1957). These principles apply with full force here: the family court suppressed Petitioner's speech to the entire world based on what it speculated might someday be harmful to a child. The best interests' standard is indeed important but fails to meet this Court's exacting state interest necessary for restricting the marketplace of ideas: a compelling one.

The family court's own citation to *Shak v. Shak*, 484 Mass. 658, 144 N.E.3d 274 (2020), underscores the constitutional error, which is increasingly common on family-court speech cases. In *Shak*, the Massachusetts Supreme Judicial Court held that a non-disparagement order in a custody case was an unconstitutional prior restraint because "harm to the child … should not simply be assumed or surmised; it must be demonstrated in detail." Id. at 663. The same is true here: Respondent offered no evidence that the child had been exposed to the memoir, and the family court identified none. The First Amendment cannot mean one thing in Massachusetts and another in South Carolina. Only this Court can resolve this growing conflict. Other courts meanwhile are following the *Shak* rationale. *In re Marriage of Candiotti*, 34 Cal. App. 4th 718 (1995) (speech restrictions require evidence of harm); *In re T.T.*, 228 A.3d 529 (Pa. SuperApp. Ct. 2020) (reversing speech restriction for lack of findings); *In re Marriage of Slayton*, 32 P.3d 696 (Wash. Ct. App. 2001) (same); *In re Paternity of B.J.M.*, 744 N.E.2d 898 (Ind. Ct. App. 2001) (same). But other courts have upheld restrictions based solely on "best interests," without applying strict scrutiny or requiring evidence of harm. *In re Marriage of Hartmann*, 228 P.3d 907 (Colo. App. 2009). This divergence in constitutional standards is precisely the kind of conflict that warrants this Court's review.

This Court has defined compelling state interests for prior restraints only in the most exceptional circumstances involving national security threats, imminent violence, or unprotected categories of speech, while maintaining that such restraints bear

an extraordinarily heavy presumption of unconstitutionality. Petitioner respectfully requests this Petition be granted so guidance may be supplied to the growing number of family courts in this nation who are using a 'best interests of the child' standard to restrain speech without findings of harm. Family courts across the country are increasingly imposing content-based speech restrictions based solely on "best interest," without evidence of harm and without applying strict scrutiny. Only this Court can supply the constitutional guidance necessary to prevent the continued erosion of First Amendment protections in these proceedings.

IV. This case is a compelling vehicle for resolving the constitutional questions

This case presents the precise features that have historically led this Court to grant certiorari in First Amendment cases:

- A content-based prior restraint enforced through criminal and civil contempt, a posture this Court has repeatedly reviewed. *Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175 (1968); *Near v. Minnesota*, 283 U.S. 697 (1931).
- A permanent gag order with no sunset provision, extending beyond the child's adulthood—long after the State's interest ends. *Troxel v. Granville*, 530 U.S. 57 (2000).
- An injunction that is overbroad and indefinite, prohibiting speech in any

context "whereby the child might learn of the same," far exceeding what this Court has permitted. *Madsen v. Women's Health Center*, 512 U.S. 753 (1994); *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971).

- A speech restriction backed by the threat of six months' incarceration, a circumstance in which this Court has consistently intervened. *Eaton v. City of Tulsa*, 415 U.S. 697 (1974); *In re Little*, 404 U.S. 553 (1972).
- A published appellate decision squarely addressing the First Amendment issue, with no jurisdictional obstacles, no mootness concerns, and no factual disputes.

This case offers a clean and urgent opportunity for the Court to resolve the deep and acknowledged split, restore the constitutional limits on prior restraints, and clarify whether family courts may impose lifelong, content-based speech bans based solely on "best interests" and without evidence of harm. It squarely presents the question that lower courts are repeatedly confronting without guidance from this Court.

CONCLUSION

The decision below permits a state court to impose an indefinite, content-based prior restraint on a parent's speech based solely on a "best interests of the child" rationale, without evidence of harm, without applying strict scrutiny, and in a form that restricts speech even after the child reaches majority. That result cannot be reconciled with this Court's First and Fourteenth Amendment jurisprudence; and invites widespread censorship in family courts across the country.

This case presents a clean and important opportunity for the Court to reaffirm the constitutional limits on prior restraints and to clarify that fundamental speech protections do not disappear in domestic-relations proceedings.

For the reasons described herein, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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